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Supreme Court of the United States

October Term, 1945

No. 220

DAISY I. MORGAN, Executrix of the Estate of CELESTE SMITH MURRAY, Deceased, *Petitioner*

vs.

FRANK T. HINES, as Administrator of Veterans Affairs, *Respondent*

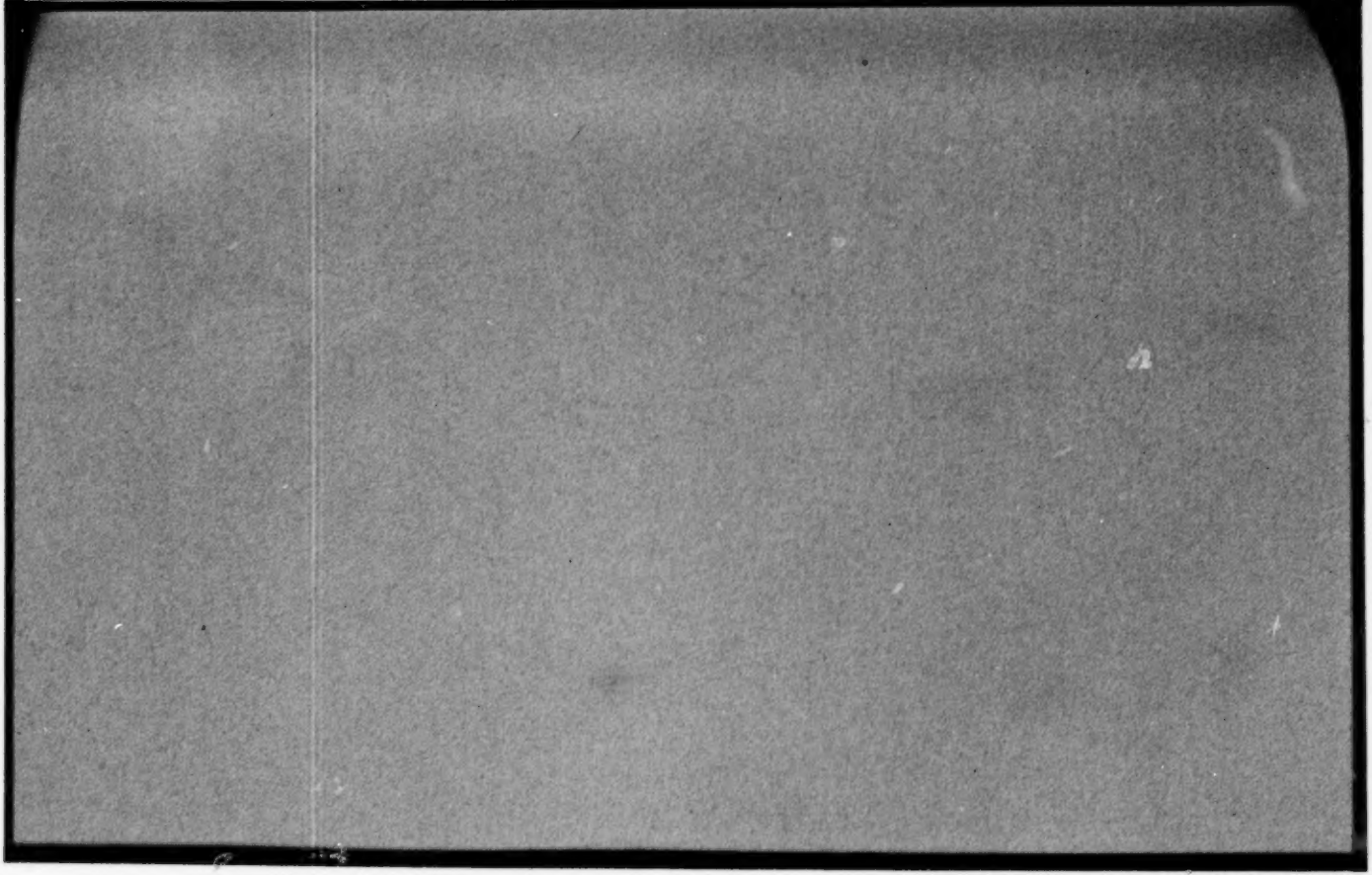
PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA

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PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA

To the Honorable Chief Justice, and the Associate Justices of the Supreme Court of the United States:

The petitioner, and the appellant below, prays that a writ of certiorari issue to review the judgment of the United States Court of Appeals for the District of Columbia entered on April 16th, 1945 (R. 21).

Opinions Below.

The Justice of the District Court of the United States for the District of Columbia did not render an opinion. The opinion of the United States Court of Appeals for the District of Columbia is set forth at pages 18 and 19 of the record.

Jurisdiction.

The judgment of the United States Court of Appeals for the District of Columbia was entered on April 16, 1945 (R. 21). Jurisdiction of this Court is invoked under section 240 (a) of the Judicial Code as amended by the Act of February 13, 1925.

Questions Presented.

The case involves two important questions of law. There are a large number of government insurance policies now in force under the World War Veterans Act, and the National Service Life Insurance Acts both of which Acts are being administered by the respondent. The first question is whether under the admitted allegations of the petitioner's Complaint was the petitioner entitled to a reinstatement of the government insurance policy issued by the respondent. The second question which is of more than ordinary importance, is whether the respondent, acting as Administrator of Veterans Affairs, may without regard to the facts in every application for reinstatement of insurance, act arbitrarily, capriciously and contrary to the evidence. The petitioner contends that under the undisputed facts, the terms of the policy, and the regulations, the policy of insurance should have been reinstated. Reinstatement was denied based on a finding that the insured was not in good health, and that there was not a scintilla of evidence before the respondent to support such a finding.

Statement of Facts.

This is a suit in the nature of a mandamus to compel the respondent, as Administrator of Veterans Affairs, to perform his ministerial duties. The suit was originally brought by Celeste Smith Murray, but pending trial she died and Daisy I. Morgan, the executrix of her will, substituted as party plaintiff.

Because of the great importance of the questions involved in this action and which turn to a great extent upon the allegations of the Complaint the facts alleged in the Complaint will be stated in detail. The judgment in the case was predicated upon the motion to dismiss the action because sufficient facts were not stated to constitute a cause of action (R. 16).

The Complaint alleges (R. 1) that the defendant (respondent) was and now is the duly appointed, acting and qualified Administrator of Veterans Affairs, and is charged by law with the administration of the World War Veterans Act, 1924, as amended, and is particularly charged with the duty of issuing insurance policies under the World War Veterans Act, the receipt of premiums on said policies, and the administrative duty of reinstating policies. The Complaint further alleges (R. 2) that one Powhattan Powers Murray while in the military service of the United States on December 12, 1927, had duly issued to him a $10,000.00 government life policy being K 852,467, and that it was provided in the said policy that in the event of death of the said insured while the said policy was in force the United States would pay to his designated beneficiary Celeste Powers Murray the sum of $10,000.00.

The Complaint further alleges (R. 2) that premiums became due and payable on the said policy on the 12th day of each month; that the premium rate for the first sixty months was $6.70 per month. The Complaint further alleges that at the end of the five years period the policy was renewed as of December 12, 1932, at a premium rate of $7.00 per month.

The Complaint further alleges that premiums on the policy were regularly paid to include the period from December 12, 1927 through January 12, 1934. This policy of insurance contained the following provision:

"This policy, if it has not been surrendered for a cash value, may be reinstated at any time after lapse upon evidence of the insurability of the Insured satisfactory to the Director of the United States Veterans Bureau, and upon the payment of all premiums in arrears, with interest from their several due dates at the rate of five per centum per annum, and the payment or reinstatement of any indebtedness which existed at the time of such default, with policy loan interest. However, if such indebtedness with interest would exceed the reserve of this policy at the time of application for reinstatement of said policy, then the amount of such excess shall be paid by the Insured as a condition of the reinstatement of indebtedness and of this policy."

The Complaint further alleges that on February 28, 1934, Celeste Smith Murray paid a premium of $7.00, and that on March 4, 1934, she paid a further premium of $12.00 covering payment of premiums for a three months period of time. It is alleged that these sums of money were received by the respondent, and (R. 3) have since been retained.

The Complaint further alleges that at the time that the premium payment of $7.00 was made on February 28, 1934, and the further premium payment of $14.00 was paid on March 4th, 1934, the said insured Powhattan Powers Murray was in good health and an insurable risk, and was in every way entitled to the reinstatement of policy numbered K-852,467 under the terms and conditions of the said policy, the Acts of Congress relating thereto, and the regulations of the Veterans Administration lawfully promulgated in reference to the reinstatement of policies of insurance of like character (R. 3). The Complaint further alleges that in support of the contention that the insured was in good health there was duly furnished affidavits of a number of persons whose names are set forth in the paragraph, and the Complaint further alleges all affidavits and evidence furnished the United States

Veterans Administration showed the insured was in good health and an insurable risk on February 28, 1934, and March 4, 1934 (R. 4). It was further alleged that the reports of investigation made by the Veterans Administration showed the same fact as to the insured being an insurable risk on the dates in question, and that no evidence to the contrary has ever been or can be obtained.

The Complaint further alleges that notwithstanding the fact that all of the evidence contained in the insurance file of Powhattan Powers Murray showed without contradiction that he was in good health on February 28, 1934, and March 4, 1934, the said respondent acting in an arbitrary and a capricious manner, and contrary to all of the evidence in the file, refused to reinstate the policy of insurance, that the action was in total disregard of the terms of the policy, the Acts of Congress, and the regulations of the Veterans Administration.

The Complaint further alleges that the respondent was vested with a discretion in the matter of the reinstatement of the policy but that he was required to exercise a reasonable discretion and that he did not act in a reasonable manner or a *quasi-judicial* capacity but that in rendering a decision that the policy should not be reinstated totally disregarded the evidence and acted contrary thereto, and that the decision made that the policy was not entitled to be reinstated is not only contrary to all of the evidence but in conflict therewith, and that there is a total lack of evidence to support the decision, and that such decision is arbitrary, capricious and contrary both as to the fact, and law applicable (R. 5).

The Complaint further alleges that Powhattan Powers Murray died on March 5, 1934 (R. 5). Since the opinion of the United States Court of Appeals for the District of Columbia with some degree of sarcasm speculates upon the

cause of death it is stated for the information of the Court, although it would seem to be immaterial, that the insured was in good health until he died instantly from gunshot wounds on March 5, 1934.

The Complaint demands the respondent to be required to certify to the Court all of the evidence contained in the file of Powhattan Powers Murray in reference to the reinstatement of the policy at the time that the decision was rendered holding that the said policy could not be reinstated because of the physical and mental condition of the said insured on February 28, 1934, and March 4, 1934, to the District Court for a review. That upon a review and consideration of such evidence that the Court order and direct the respondent as Administrator of Veterans Affairs to perform his ministerial duty by reinstating the policy of insurance, and by further requiring him to apply the premiums paid on February 28, 1934, and March 4, 1934.

The Complaint further prays for such other and further relief as to the Court may appear to be proper and just (R. 6).

The respondent filed an answer to the Complaint (R. 7, 8, 9, 10, 11, 12, 13, 14, 15).

The judgment is however predicated upon the motion to dismiss (R. 16) upon the grounds that the complaint fails to state a cause of action upon which relief may be granted. Judgment is based on the motion to dismiss which was granted (R. 16).

Specifications to Errors To Be Urged.

That the District Court of the United States for the District of Columbia, erred in sustaining the motion to dismiss the complaint, and that the United States Court of Appeals for the District of Columbia erred in affirming the judgment.

Reasons for Granting the Writ.

The petitioner asserts that a writ of certiorari should be granted under subdivision (5) of Rule 38 of this Court in that the United States Court of Appeals has decided a most important question of law in conflict with the decision of other United States Circuit Court of Appeals, and the applicable decisions of this Honorable Court, to which reference will be made in the cases cited in the Argument and Brief of the petitioner.

This case is not only of the utmost importance to policyholders whose policies were issued to persons who were insured under the original War Risk Insurance Act, and its amendments, and the World War Veterans Act, 1924, and its amendments, but also to persons who have been since October 1940 insured under the National Service Life Insurance Act. There has been over a $100,000,000,000. worth of insurance issued under these acts, and the question of whether the Administrator of Veterans Affairs can act arbitrary, capricious and contrary to the evidence in the matter of the reinstatement of these policies is of utmost importance to millions of policyholders. The motion to dismiss admits that the respondent did so act. No case has ever been considered by the Court of greater importance to such a number of persons, or so involves rights of policyholders. If the respondent in the matter of acting on the reinstatement of insurance policies can totally disregard evidence, and base a contrary decision on no evidence of any character the policyholders are now entitled to know it, and ask for their remedy by amendment to the various laws in order to be protected against the unjust decisions based on no evidence of arbitrary officials of the government.

It is the contention of the petitioner that under the undisputed facts it was the duty of the respondent to re-

instate the policy of insurance in question. It was the duty of the respondent to act purely in a ministerial capacity in this case. The evidence showing that the insured was in good health was undisputed. There was a sufficient amount of premiums paid to reinstate the policy. Under these undisputed facts, the respondent had but one duty to perform and that was a ministerial one of reinstating the policy. The decision of the District Court of the United States for the District of Columbia and the decision of the United States Court of Appeals for the District of Columbia conflicts with the decisions of this Court holding that mandamus will lie to compel officials to perform a purely ministerial duty. In the case of *Wilber v. U. S. ex rel. Kadrie, et al.*, 281 U. S. 206-222, 74 L. Ed. 809, this Court held that where an officer's duty is plainly prescribed, performance thereof may be compelled by mandamus. Under the undisputed facts in this case, the respondent had no discretion save and except to reinstate the policy of insurance. The complaint alleges and the Motion to Dismiss admits that there is no evidence to support the decision that the insured was not in good health on the date that the premiums were tendered, and the only requirements were that he be in good health on that date. The decision of the United States Court of Appeals for the District of Columbia also conflicts with the decisions of its own making in the case of *Hines v. U. S.*, 105 Fed. 2nd 85; the Court below held that an administrative official could be compelled to perform a ministerial act. Also, the decision conflicts with the view point and the general rule laid down by the 7th United States Circuit Court of Appeals in the case of *Cowan et al. v. Dickinson Industrial Site et al.*, 104 F. 2d 771, held that the discretion of a trial Court should not be disturbed unless abused; that the discretion was a judicial one and did not extend to arbitrary and unreasonable action.

This Court early held that the Courts may compel an executive officer to perform a mere ministerial act, *U. S. v. Schurz*, 102 U. S. 378, 26 L. Ed. 167. This is not the ordinary case where an administrative official exercises a discretion in the matter of performing a ministerial act, or rendering a decision upon the facts before him. The complaint alleges, and the Motion to Dismiss admits, that there was no evidence before the respondent upon which to predicate a decision that the insured was not in good health, which was the only basis for the denial of the application for reinstatement of the policy in question.

The United States Court of Appeals for the District of Columbia overlooked its own decisions in deciding this case. In the case of *U. S. ex rel. Thomson v. Custis*, 35 App. D. C. 247, the Court below held that while the Board of Medical Examiners of the District of Columbia had a reasonable discretion in admitting to practice physicians who have qualified in outside jurisdictions, that they could not arbitrarily or capriciously deny an application for a license to practice medicine when the law and the facts showed that the applicant was entitled to receive his license. It is this line of decisions upon which the petitioner relies, —that where the undisputed facts and law applicable thereto show that the petitioner, as a matter of right, is entitled to the performance of a ministerial act, the administrative official will be compelled to perform that act.

The decision of the United States Court of Appeals for the District of Columbia departs from this theory of law and holds in effect that in acting on the reinstatement of the policy of insurance the respondent may act arbitrary, capricious and contrary to fact and law, and that the Courts have no authority to control his action. It is for this reason that this Court, in the exercise of its supervision, should assume jurisdiction in this case and hear and determine

the questions of law which are of such vital importance to millions of policyholders who have been issued government insurance.

Conclusion.

Wherefore, petitioner prays that a Writ of Certiorari may issue under the seal of this honorable court in this cause, directed to the United States Court of Appeals for the District of Columbia and that upon a review, the judgment of the United States Court of Appeals for the District of Columbia be vacated and reversed and set aside and that this cause be remanded to that Court with instructions to proceed further in accordance with the views of this Court.

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